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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC. 20554

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In the Matter of	)	
	)	
Application for Consent	)	
to the Transfer of Control of Licenses and	)	CC Docket No. 98-141
Section 214 Authorizations	)	
	)	
Ameritech Corporation,	)	
Transferor	)	
	)	
SBC Communications, Inc.,	)	
Transferee	)	

COMMENTS OF LEVEL 3 COMMUNICATIONS, INC. ON PROPOSED MERGER CONDITIONS

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SUMMARY

Appropriate merger conditions could significantly ameliorate the undue concentration of market power in a single company that the proposed merger would establish. The proposed conditions, however, are far from aggressive attempts to achieve public interest benefits from the merger. Thus, for the most part, the proposed conditions do not fundamentally depart from the carriers' proposals in any significant respect.

While appropriate conditions could create long-term benefits, the proposed conditions only last three years, and, in many respects the conditions are so weak that they would not provide any assurance that any public interest benefits would actually be achieved. Some of the proposed conditions, such as those concerning pricing and access to UNEs, do little more than require what the carriers must do anyway under the Act and the Commission's rules.

If the Commission does not deny the merger, it should adopt a far more ambitious approach to achieving the public interest. Most importantly, the Commission should take steps to implement a structural solution to SBC's and Ameritech's incentive and ability to use their control of loops and local exchange facilities to disadvantage competitors. In addition, as a general matter, compliance with conditions should be required before the merger and should be permanent or at least extend well beyond three years. This would provide a more reasonable assurance that there would be some long lasting benefits of the merger.

The Commission should additionally strengthen specific conditions in a number of ways, as discussed further in these comments.

Level 3 Communications, Inc.
CC Docket No. 98-141
July 19, 1999

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COMMENTS OF LEVEL 3 COMMUNICATIONS, INC.
ON PROPOSED MERGER CONDITIONS

Level 3 Communications, Inc. ("Level 3") submits these comments in response to the conditions proposed by SBC Communications, Inc. and Ameritech Corporation ("SBC" and "Ameritech" or "SBC/Ameritech") for approval of the proposed merger of these two companies.[1] Level 3 has earlier filed Comments and Reply Comments in this proceeding.[2]

Level 3 is a communications and information services company that is building an advanced Internet Protocol ("IP") technology-based network across the United States and around

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[1] *See Public Notice*, Pleading Cycle Established for Comments on Conditions Proposed by SBC Communications, Inc. and Ameritech Corporation For Their Pending Application For Transfer of Control, CC Docket No. 98-141, DA 99-1305, released July 1, 1999.

[2] Comments of Level 3 Communications, Inc. filed October 18, 1998; Reply Comments of Level 3 Communications, Inc. filed November 16, 1998.

the world. The Level 3 network will be the first national communications network to use Internet technology end-to-end. Level 3, through its subsidiaries Level 3 Communications, LLC and PKS Information Services, Inc., will provide a full range of communications services – including local, long distance and data transmission – as well as enhanced services to its customers.

I. A MORE AMBITIOUS APPROACH TO ACHIEVING THE PUBLIC INTEREST SHOULD BE ADOPTED

Level 3 believes that appropriate merger conditions could significantly ameliorate the undue concentration of market power in a single company that the proposed merger would establish and could go a long way towards making the merger in the public interest. Level 3 believes, however, that the proposed conditions are far less aggressive than they could be in seeking to address the fundamentally anti-competitive nature of the merger. Thus, for the most part, the proposed conditions do not fundamentally depart from the carriers' proposals in any significant respect, apparently accepting, for example, the fiction of out-of-region competition as a key argument in favor of the merger. While appropriate conditions could create long-term benefits, the proposed conditions only last three years. And, in many respects the conditions are so weak that they would not provide any assurance that any public interest benefits would actually be achieved. In addition, some of the proposed conditions, such as those concerning pricing and access to UNEs, do little more than require what is already required under the Act and the Commission's rules. Therefore, they add nothing to the public interest equation and effectively "reward" the carriers for meeting current obligations.

If the Commission does not deny the merger, it should adopt a far more ambitious approach to achieving the public interest. Most importantly, as discussed in Section III, below, the Commission should take steps to implement a structural solution to SBC's and Ameritech's incentive and ability to use their control of loops and local exchange facilities to disadvantage competitors. In addition, as a general matter, compliance with conditions should be required before the merger, *i.e.* they should be preconditions.

Further, any temporary benefits from the proposed merger could not outweigh the permanent detriments to competition caused by concentration of nearly one-third of the nation's local access lines in one company. There is no rational basis for concluding that the substantial *permanent* harm to competition that would be entailed in the merger could be offset by the *temporary* conditions that the Commission is considering. Accordingly, most of the conditions that would be appropriate should be substantially lengthened - ten years - or made permanent. This would provide a more reasonable assurance that there would be some long lasting benefits of the merger.

The Commission should additionally strengthen specific conditions as discussed below, if it approves the merger.

II. THE MERGER CONDITIONS SHOULD BE STRENGTHENED

A. The Proposed "Collocation Compliance Plan" Is Weak

The proposed Collocation Compliance Plan envisions that SBC and Ameritech will implement the requirements of the *Collocation Order* subject to audits conducted by firms

employed by the carriers for this purpose. SBC and Ameritech would be required to take some initial steps toward implementation prior to the merger subject to a review by a firm employed by the carriers and then complete implementation after the merger subject to a report by the auditing firm 10 months after the merger.

Level 3 is very concerned that SBC and Ameritech will attempt to use the audit reports as substitutes for FCC or state review of their compliance with collocation requirements, or use the reports as a way of precluding meaningful FCC or state review of their compliance. In effect, the Collocation Compliance Plan is not much more than a vehicle for SBC and Ameritech and its auditors to work out what shall constitute compliance with the Commission's rules independent of regulators and competing carriers and present it to regulators as proof that they have complied with the Commission's rules.

This prospect is particularly disturbing because there is no assurance that the auditor will actually be independent of SBC/Ameritech. The companies propose only that the auditor "shall not have been instrumental during the past two years in designing substantially all" of the systems being audited. Obviously, this leaves room for SBC/Ameritech to employ as auditors firms that they have already employed - and that they are likely to employ in the future. Thus, SBC/Ameritech will likely be able to exert substantial influence over the auditing company. Given the lack of independence of the auditor, the essentially private nature of the auditing process, and the possibility that SBC/Ameritech will seek to obtain a biased report and use it to

thwart review of their collocation compliance by regulators, the Commission should not accept the Collocation Compliance Plan as proposed.

If the Commission determines to proceed with this plan, it should make significant changes. The auditor should not have been employed at all in the past in designing any of the systems and processes under review and the companies should not be permitted to employ the selected firm for any purpose in the future. This, rather than the weak proposal of the companies, would assure that the auditing company will be independent.

In addition, the Commission should strengthen the type of initial audit report that is required. The conditions propose that SBC and Ameritech prior to the merger shall retain one or more auditors to perform an "examination engagement" and issue an "attestation report resulting in a positive opinion" regarding the terms and conditions of collocation offered in tariffs and amendments to interconnection agreements. This level of audit report will not provide any significant assurance of compliance with the Commission's collocation rules.

The Commission should also require that the scope of the post-merger audit report be approved before, not after, the merger. There is little point in permitting the merger to go forward on the theory that there will be a significant audit report assuring compliance when the scope of the merger is not even clear. The Commission should also provide that the audit report and underlying data will be made public and offered for comment. Absent this requirement SBC/Ameritech may be able to obtain a biased, conclusory report that interested parties will not be able to contest since they do not have any of the underlying supporting information.

If the Commission proceeds with the Collocation Compliance Plan without making these changes, it should at least make clear that the audit reports are not substitutes for state or federal tariff review or interconnection negotiations and that audit reports will not be entitled to any weight before state or federal regulators in evaluations of whether SBC/Ameritech has complied with the Commission's collocation rules.

B. OSS and Performance Standards Can Be Strengthened

Improved and more rapid provision of access to OSS and development of performance standards can substantially support the ability of competitive carriers to provide service. Level 3 supports the proposed OSS and performance standards conditions as far as they go.

Level 3 believes that complete OSS implementation should occur prior to the merger, or if after the merger, on a much shorter timeline. One year would be a more reasonable target date. They should also be available on the same one year time frame throughout the SBC/Ameritech region.

In addition, there is no reason why the federal conditions imposed as part of the proposed merger should not be at least as extensive as those adopted by the Texas and Ohio commissions.[3] The performance standards proposed in this proceeding cover about 20 of the 100 measures

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[3] *See Investigation of Southwestern Bell Telephone Company's Entry into Texas InterLATA Telecommunications Market*, Project No. 16251 (Tex. P.U.C. April 26, 1999) (" *Texas Collaborative Process MOU*"); *In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control,* Stipulation and Recommendation, Case No. 98-1082-TP-AMT (Oh. P.U.C. February 23, 1999).

adopted in Texas. Ohio standards encompassed about 60 of those measures. Level 3 urges that all of the Texas measures be adopted throughout the SBC/Ameritech region. At a minimum, if there are legitimate reasons why some measures should not be required in some states, then the maximum feasible number should be adopted in each individual state. A "lowest common denominator" approach, if that is what is motivating the limited vision of the proposed conditions, is not one that would optimize the public interest benefits of the merger. SBC and Ameritech should bear the burden of showing that particular measures adopted in Texas cannot be implemented throughout the SBC/Ameritech regions.

C. Waiver of OSS Charges

SBC and Ameritech propose to waive OSS usage charges. However, these charges are minuscule compared to development costs. Accordingly, waiver of development costs is necessary to provide a significant benefit and should be required as a condition of the merger.

D. OSS: Assistance for Small CLECS

The Commission should make permanent the requirement that SBC/Ameritech provide small CLECs training and assistance concerning OSS at no charge. Notice of the availability of training is not required until 60 days after the merger. And, full implementation of OSS is not required for 24-30 months after the merger. Thus, Level 3 submits that for all practical purposes training is offered for only 10 months during the initial, incomplete phases of OSS implementation. To make training for small CLECs meaningful, SBC/Ameritech should be

required to provide it at no charge permanently, or at least for ten years. SBC/Ameritech should also be required to update its training in light of the then-current state of its OSS development.

E. xDSL and Advanced Services Deployment

Level 3 strongly supports a requirement that SBC/Ameritech provide information to competing carriers concerning the suitability of loops for provision of advanced services. This information should include comprehensive loop qualifying information, such as exact loop length and the existence and location of bridge-taps and load-coils.

However, the proposed condition only requires access to this information to the same extent that it is available to SBC/Ameritech's own retail operations, including the retail operations that will be a part of the separate advanced services affiliate. Level 3 submits that this information should be available regardless of whether it is available to SBC/Ameritech's retail operations. While it is possible that the proposed condition could achieve some level of non-discriminatory access to this information, there is no reason why the Commission should limit its goals to assuring that SBC/Ameritech treats competing providers in the same way as its affiliate. Rather, this proceeding, if the merger goes forward, provides an opportunity for the Commission to take some more meaningful steps to promoting advanced services apart from assuring non-discrimination. Thus, the Commission should affirmatively require SBC/Ameritech to make a complete, comprehensive disclosure of all pre-qualifying loop information regardless of what SBC/Ameritech uses, or provides to, itself.

In this regard, the proposed condition would not necessarily provide competing carriers with the information they need to provide advanced services in a timely and efficient manner. The proposed condition is that SBC/Ameritech will provide access to the same information that is available to its own affiliate. But what if the parent company decides that it is not going to provide advanced services in some parts of its region and that, therefore, it will not make pre-qualifying loop information for those areas available to its affiliate? The proposed condition would be completely ineffectual in providing access to necessary pre-qualifying loop information to competing carriers for these regions. Thus, if competing carriers want to provide advanced services to secondary markets to which SBC/Ameritech has decided it will not provide service, they will be substantially hindered in providing service because of the unavailability of loop qualifying information.

Fundamentally, the proposed condition concerning access to loop information appears to be premised on assuring that SBC/Ameritech will not experience any competitive disadvantage in making pre-qualifying loop information available and that it will be required to do so only in a manner consistent with its own marketing plans. As such, the proposed condition is remarkable only for its weakness. Again, Level 3 urges the Commission to require full disclosure of this information regardless of SBC/Ameritech's own advanced services deployment plans. This, rather than the disappointing condition proposed, would provide some genuine public interest benefits.

The Commission should also require that SBC/Ameritech's xDSL services be available for resale pursuant to Section 251(c)(4) of the Act. SBC/Ameritech should also be required to establish procedures to provide demarcation point information to CLECs providing xDSL services over unbundled loops.

F. Structural Separation for Provision of Advanced Services Should be Left to the *Advanced Services Rulemaking*

The Commission is examining in the *Advanced Services Rulemaking*[4] a number of issues associated with its proposal in that proceeding to permit incumbent LECs to provide advanced services through an unregulated affiliate. Principal among these issues is whether the affiliate would be a "successor or assign" of the incumbent LEC under Section 251(h)(1) of the Act, especially in light of the possible permitted relationships between the parent and affiliate, including substantial asset transfers.

Level 3 submits that the proposed condition requiring an SBC/Ameritech advanced services affiliate effectively prejudges the key issues in the rulemaking. In particular, the statement that "the affiliate shall not be a successor or assign of SBC/Ameritech" and, therefore, would not be subject to the key market-opening provisions of Section 251(c) of the Act, would apparently, if approved as part of the merger, constitute an opinion by the Commission that the affiliate would not constitute a successor or assign. Therefore, the Commission should not

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[4] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Notice of Proposed Rulemaking, CC Docket No. 98-147, FCC 98-188, released August 7, 1998 ("*Advanced Services Rulemaking*").

establish a separate affiliate requirement as a condition of the merger. Instead, the Commission should leave those issues to resolution in the rulemaking where it is directly addressing them.

Level 3 emphasizes that the proposed condition would establish an unregulated advanced services affiliate serving one-third of the nation's access lines. Moreover, in contrast to the proposal in the rulemaking SBC/Ameritech would be required establish the affiliate for provision of advanced services and would not be permitted to provide advanced services on an integrated basis. Further, based on the proposed merger conditions it is clear that the parties contemplate that the Commission's decision in the *Advanced Services Rulemaking* will be tailored to assure that the separate affiliate proposed in the merger condition will be unregulated, as the parties propose. Level 3 is concerned that the separate affiliate proposed in the merger condition will influence the outcome of the rulemaking and is likely to be a major factor in the decision the Commission reaches as to what will constitute an unregulated advanced services affiliate. Thus, the Commission will be deciding in the rulemaking what degree of affiliation would make an affiliate a successor or assign under Section 251(h)(1) in light of the impact of that decision on the proposed merger. Level 3 respectfully submits that the Commission should not reach this momentous regulatory consequence without directly seeking comment on it in the rulemaking by issuing a further notice.

In any event, SBC/Ameritech's proposed degree of structural separation between it and its advanced services affiliate is weak and would confer substantial benefits on the affiliate. In particular, the Commission should not permit SBC/Ameritech's separate affiliate to use the same

name, trademarks, etc. as SBC/Ameritech and to have its employees located in the same buildings (and same floors) as SBC/Ameritech personnel. And, joint marketing between the affiliate and SBC/Ameritech should not be permitted. Permitting joint marketing would give SBC/Ameritech a large advantage that CLECs may not be able to overcome. Level 3 submits that this degree of affiliation between SBC/Ameritech and the affiliate, including 100 percent ownership of the affiliate and asset transfers, would render it a successor or assign under Section 251(h)(1).

The proposal that the separate affiliate would be entitled to receive line sharing on an interim basis, but not unaffiliated companies, would also constitute an unjustified discrimination in favor of the SBC/Ameritech affiliate. The proposal that unaffiliated companies could purchase loops at the surrogate line sharing rate would not necessarily eliminate any price advantage that the SBC/Ameritech affiliate would enjoy, and, for all that can be gleaned from the merger conditions, may provide a significant advantage to the affiliate. The Commission should prohibit SBC/Ameritech from providing line sharing to its affiliate until it can provide this to independent providers. This is preferable because it would not entail a substantial risk to competition entailed in the proposed conditions concerning line sharing.

The Commission should also not restrict purchasers of loops at the surrogate line sharing charge to provision of advanced services. Absent some basis for concluding that independent providers will not be at a disadvantage vis-a-vis the SBC/Ameritech affiliate regarding provision of advanced services, there should be no restrictions on the services they could provide over

loops purchased at the surrogate line sharing price. In addition, the penalty for providing voice service over a line purchased at the surrogate rate is unnecessary, and should be eliminated.

The proposed definition of advanced services — 56kbps or greater in one direction — would classify virtually all services above current analog services as advanced. Thus, the proposed separate affiliate condition combined with action in the *Advanced Services Rulemaking* would result in a sweeping deregulation for nearly one-third of the access lines in the nation for nearly all future services. As noted, the proper mechanism for considering this issue is a further notice in the *Advanced Services Rulemaking.*

The statements concerning the jurisdictional nature of ISP traffic should be deleted from the proposed conditions concerning activation of new ISP customers by, and transfers of existing ISP customers to, the SBC/Ameritech advanced services separate affiliate. There is no reason to impose any conditions concerning the jurisdictional nature of ISP traffic. The SBC/Ameritech explanation of the proposed conditions does not provide any justification for this proposal. In any event, the proposed qualification that the "FCC has determined that Advanced Services used to provide Internet services are interstate services" is incorrect. The Commission has found at most that services provided to ISPs are jurisdictionally mixed.[5]

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[5] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999, para. 19 ("*Dial-Up Order*").

G. Provision of UNEs

The proposed qualification that SBC/Ameritech will not be required to provide any UNEs beyond those established in the *UNE Remand Proceeding*,[6] after all appeals, means that this condition will not provide any significant public interest benefits beyond what will arise from that rulemaking. Merely requiring what the rulemaking requires, or what the carriers have pledged to do pending the rulemaking, adds nothing. Thus, this condition as proposed cannot be given any weight in determining whether the merger as conditioned would serve the public interest.

Instead, the Commission should require that SBC/Ameritech provide all current UNEs permanently and that it provide additional UNEs, such as the "extended link," regardless of the outcome of the *UNE Remand Proceeding*. This could provide some genuine, additional public interest benefits beyond what may be separately required in any event.

H. Carrier-To-Carrier Promotions Should be Strengthened

In its initial comments in this proceeding, Level 3 urged the Commission, if it approves the merger, to impose conditions requiring promotional discounts.[7] Level 3 strongly endorses the proposal to require discounts for unbundled local loops and increased resale discounts. This

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[6] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 & 95-185, Second Further Notice of Proposed Rulemaking, DA 99-70 (rel. April 16, 1999).

[7] Comments of Level 3 Communications, Inc. In Opposition to Application for Transfer of Control, CC Docket No. 98-141, filed October 15, 1998, p. 38.

could substantially enhance the ability of competing service providers to enter new markets and offer consumers a competitive alternative.

Level 3 urges the Commission to strengthen these promotions in several ways. First, there is no reason to limit the discounts to provision of residential services. Incumbent LECs in their requests for pricing flexibility contend that competition for business services is concentrated in relatively few areas.[8] Promotional discounts for provision of business services should at least be required in smaller markets. This could help promote competition in these markets.

Level 3 also submits that there is no rational connection between the proposed promotional loop discounts and interLATA entry or competition in out-of-region markets. There is no reason to terminate these discounts upon Section 271 approval or provision of out-of-region competition in 15 markets. This qualification on provision of promotional loop discounts should be eliminated.

In addition, the caps on promotional loops and resold lines should be eliminated or substantially increased. The proposed caps constitute a tiny percentage of SBC/Ameritech access lines. The fact that these discounts are only available for loops and resold services provided after the merger is already a significant limitation. The proposed conditions do not provide any explanation or justification for these caps. Accordingly, the caps should, at a minimum, be substantially increased.

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[8] *See, e.g.* Petition of SBC Communications, Inc. for Forbearance from Regulation as a Dominant Carrier for High Capacity Dedicated Transport services in Fourteen Metropolitan Service Areas, CC Docket No. 98-227, *Public Notice* (December 8, 1998).

I. Most Favored Nation Provisions Are Too Limited

Level 3 also strongly supports conditions that would support the ability of competing carriers to opt-in to provisions of SBC/Ameritech interconnection agreements. However, the proposed conditions are so heavily qualified that they will only provide a very modest, temporary benefit to competing providers. For example, the availability of out-of-region agreements would be limited to arbitrated agreements and to those that have not previously been available to any other CLEC. This would permit SBC/Ameritech to limit the availability of an interconnection agreement provision by simply agreeing to it voluntarily. And, the limitation that the provision be entirely new substantially limits any benefits from this proposed condition. The Commission should require that carriers interconnecting with SBC/Ameritech in-region may obtain any provision of any interconnection agreement of out-of-region SBC/Ameritech affiliates.

Under the proposed conditions, the availability of provisions of in-region agreements is limited to those that were voluntarily negotiated by SBC/Ameritech after the merger. This condition unnecessarily restricts the availability of provisions of in-region interconnection agreements. Level 3 submits that any provision of in-region agreements, whether arbitrated or voluntary, should be available. There is no justification for limiting the availability of pre-merger Ameritech, SNET, or PacBell interconnection agreements.

Level 3 also observes that, taken together, the most-favored nation conditions make little sense in that out-of-region agreements are available only if arbitrated while in-region agreements are available only if voluntarily agreed to. Level 3 submits that there is no rational explanation

for this scheme of availability of interconnection agreements. The Commission should require that any provision of any existing or future interconnection agreement of SBC/Ameritech or its out-of-region affiliates should be available for opt-in, whether arbitrated or voluntarily negotiated. The Commission should also make clear that this condition in no way limits SBC/Ameritech's obligation to comply with Section 252(i) of the Act.

J. National Local Strategy

Vigorous out-of-region competition by SBC/Ameritech affiliates could serve the public interest. However, these companies' proposals to engage in out-of-region competition are not motivated by any business plans to engage in such competition but instead by the need to fabricate a public interest justification for the merger. If these companies had intended for business reasons to engage in such competition they would have done so long before the proposed merger.

Level 3 submits that the proposed conditions concerning the national/local strategy require such a minimal level of participation by SBC/Ameritech in out-of-region competition that they do not add any significant public interest benefits to the merger. Thus, the proposed conditions do not provide any assurance that SBC/Ameritech would provide out-of-region local competition even temporarily. The proposed conditions only require minimal, or vague and unenforceable, commitments. Provision of service to only one customer by the initial deployment deadline, and establishment of collocation in ten wire centers in a market and "offering" of service to all customers within a year does not provide any assurance of competitive

alternatives. These requirements could be met by providing minimal levels of service and engaging in minimal levels of "offering" service in a market.

Given the weakness of these requirement and the fact that they terminate in three years, they do not provide any assurance of achieving public interest benefits from out-of-region competition. While the hefty proposed penalties may assure that SBC/Ameritech will take the minimal steps required by the conditions, these conditions could not form the basis for a conclusion that the merger will result in significant or serious efforts by these companies to provide out-of-region competition. Accordingly, Level 3 submits that the Commission may not give any weight to these conditions in determining whether the merger as conditioned would serve the public interest.

K. Continued Compliance With the Conditions Is Relevant to Section 271 Issues

Level 3 submits that the Commission should state in any order approving the merger that it will consider in any future Section 271 proceeding whether or not SBC/Ameritech has complied, or is continuing to comply, with the merger conditions as relevant factors in its overall public interest assessment of the Section 271 application. Even if the conditions have expired, the Commission can, and should, consider whether SBC/Ameritech is continuing to comply with them in assessing the extent to which it has opened local markets to competition.

III. THE MERGER SHOULD BE CONDITIONED ON PLANNING FOR LOOP DIVESTITURE

As pointed out in its initial comments in this proceeding, the monopoly control of local exchange markets - which would be exacerbated by the proposed merger - is unlikely to be

resolved without a structural solution that isolates BOCs from control of loops.[9] Level 3 urged the Commission to explore alternative approaches that would effectively separate control of the loop from the BOCs' competitive interests, so that there would be no incentive to limit competitive access to these facilities or to price them in a discriminatory or strategic manner. Level 3 proposed a solution involving divestiture of local loops to an independent company and urged consideration of other alternatives that could eliminate BOCs' incentives and ability to use control of the loop to hinder competition.

Level 3 recognizes that it may not be realistic to, at this point, establish as a condition of the proposed merger, that SBC/Ameritech divest loops. However, Level 3 urges the Commission to impose conditions that could form the basis for further evaluation of this proposal. Specifically, the Commission should require that SBC/Ameritech retain an independent firm to evaluate the cost and feasibility of divestiture of loops and to develop, in light of any cost or technical issues, a plan for implementing this concept by SBC/Ameritech, including timetables. The Commission should require that SBC/Ameritech cooperate in, but not direct, development of this plan. The Commission could then offer this plan for comment to determine whether the Commission should require SBC/Ameritech and other BOCs to implement it.

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[9] Comments of Level 3 Communications, Inc. In Opposition to Application for Transfer of Control, CC Docket No. 98-141, filed October 15, 1998, p. 35.

Level 3 submits that consideration of this concept is particularly important given that SBC/Ameritech would as a result of the merger control nearly one-third of all access lines in the nation. Divestiture of loops by this enormous company could substantially ameliorate the undue concentration of control that the merger would create.

IV. CONCLUSION

For these reasons, Level 3 urges that, if the merger is approved, the Commission strengthen and modify the proposed conditions as discussed above.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, postage prepaid, by U.S. mail, this 19th day of July, 1999, to the persons listed on the attached list.

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